

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL R. THOMAS, individually)	Case No.: 1:12CV2443
and on behalf of all others similarly)	
situated,)	
)	Judge Dan Aaron Polster
Plaintiff,)	
)	INTELLICORP RECORDS, INC.’S
v.)	MOTION TO DISMISS OR STRIKE
)	COUNT I OF PLAINTIFF’S
INTELLICORP RECORDS, INC.,)	COMPLAINT
)	
Defendant.)	
)	
)	

Defendant Intellicorp Records, Inc. (“Intellicorp”) moves this Court to dismiss Plaintiff Michael R. Thomas’s class claim (Count I of the Complaint) under Federal Civil Rule 12(b)(6). Plaintiff’s class claim does not include the necessary allegation that each putative class member’s criminal background report was inaccurate, or that it contained adverse information. Because Plaintiff’s class claim omits necessary elements of a claim under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (the “FCRA”), and thus fails to assert a claim upon which relief can be granted, it should be dismissed.

If Plaintiff's class claim is not dismissed pursuant to Rule 12(b)(6), it should be stricken pursuant to Rule 12(f). The claims of every class member will require a showing that their individual background reports were inaccurate. Thus, even if the class definition were amended to include all necessary elements of an FCRA claim, it is clear from the face of the Complaint that individual issues would predominate over issues common to the putative class. A facially defective class claim such as this can and

should be dismissed at the pleading stage to avoid wasting the time and resources of the Court and the parties.

For the foregoing reasons and for those stated in the attached memorandum, Intellicorp respectfully requests that the Court dismiss, or in the alternative, strike Count I of the Complaint.

Date: December 24, 2012

Respectfully submitted,

/s/ David H. Wallace

David H. Wallace (0037210)

dwallace@taftlaw.com

Gregory J. O'Brien (0063441)

gobrien@taftlaw.com

Taft Stettinius & Hollister LLP

200 Public Square, Suite 3500

Cleveland, Ohio 44114-2302

Phone: (216) 241-2838

Fax: (216) 241-3707

Joel M. Cohen (*pro hac vice motion pending*)

joel.cohen@davispolk.com

Gina Caruso (*pro hac vice motion pending*)

gina.caruso@davispolk.com

Davis Polk & Wardwell LLP

450 Lexington Avenue

New York, New York 10017

Phone: (212) 450-4000

Fax: (212) 701-5800

*Counsel for Defendant Intellicorp Records,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2012, a true and correct copy of the foregoing document was filed electronically. Notification of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

I further certify that a true and accurate copy of the foregoing was served this 24th day of December, 2012, via U.S. mail upon the following:

Ian B. Lyngklip
Ian@MichiganConsumerLaw.net
Lyngklip & Associates
Consumer Law Center, PLC
24500 Northwestern Highway, Ste. 206
Southfield, MI 48075

Leonard Bennett
Consumer Litigation Associates,
Newport News
763 J. Clyde Morris Blvd., Ste. 1-A
Newport News, VA 22601

/s/ David H. Wallace
David H. Wallace

*Counsel for Defendant Intellicorp
Records, Inc.*